

Elaborate securities commission with a essay



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Introduction Aside from the Companies Act 1965, the primary laws governing the regulation of securities and futures in Malaysia are the Securities Industry Act 1983, the Securities Commission Act 1993 and the Futures Industry Act 1993. The term ' securities laws' is defined in the Securities Commission Act as meaning these Acts as well as the Securities Industry (Central Depositories) Act 1991: section 2. References to these laws also include references to any regulations, rules, orders, notifications and other subsidiary legislation made under them: section 2A, Securities Commission Act. The Securities Industry Act , which is formed on the provisions and structure of the Australian Corporations Law and the Hong Kong Securities and Futures Commission, is part of the securities regulation regime, which administers the issuance, distribution and trading of securities in Malaysia. The basic objective of setting up the Commission was to put in place a central authority to implement and oversee the regulatory framework for trade in securities and futures .

The duty for regulatory oversight of trading in securities rests with the Securities Commission established under the Securities Commission Act (SCA). Prior to 1993, there was no single government body that was given the responsibility for overseeing the development of the Malaysian capital market . The securities industry in Malaysia was then regulated by a number of bodies such as the Capital Issues Committee, the Panel of Takeovers and Mergers, the Registrar, Foreign Investment Committee, Ministry of International Trade and Industry (MITI) and Bank Negara Malaysia (BNM/Central Bank). As of March 1, 1993, the securities industry entered into a new era with the formation of a wholly new centralized regulatory body

called the Securities Commission (the Commission) when the SCA was brought into force. With the formation of the Commission, the Capital Issues Committee and the Panel of Takeovers and Mergers were disbanded and their functions taken over by the Commission. Meanwhile, the functions of the Registrar in regulating the securities industry have diminished considerably though the position of Foreign Investment Committee is retained.

The need to set up a single regulatory body in the securities industry was recognised by the government in 1991 when it published the Sixth Malaysian Plan which stated that: In order to meet the demand of the increasingly sophisticated securities industry, government will consider establishment of a single regulatory body to promote development of capital market.

Proposed commission will be given responsibility to streamline regulations of securities market and to speed up processing of application and approvals for transactions . The Commission's Objective and CharacteristicsThe Commission's mission statement is to ' promote and maintain fair, efficient, secure and transparent securities and futures markets and to facilitate the orderly development of an innovative and competitive capital market '. The Commission is a self-funding statutory body with investigative and enforcement powers. Funds are derived from a levy that is imposed on transactions and filing fees .

It reports to the Minister of Finance and public accountability of this body is satisfied via the annual report it prepares and tables to the Parliament. In February 2001, the Commission released a Capital Market Masterplan (CMP). This is a comprehensive plan that charts the capital market with a blueprint

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for growth, strategic positioning and development for the next decade. The CMP prioritises the immediate needs of the capital market and charts its direction and long-term growth in anticipation of global developments to its environment. Organizational Structure The Securities Commission is a creature of statute with perpetual succession and which may be sued in its own corporate name. The membership of the Securities Commission comprises of a Chairman, four members representing the Government and four other persons.

The Securities Commission is led by a Chairman, who shall be an Executive Chairman. The Securities Industry Development Corporation is linked and reports directly to the Chairman. Other than that, there are four other departments directly linked to the Chairman as well, which are: a)Office of the Chairman; b)General Counsel; c)Corporate and International Affairs; and d)Investor Affairs and Complaints. As stated in the organization chart from its website , the Deputy Chief Executive is also directly under the Chairman, with two Managing Directors reporting to it. Under these two Managing Directors are branches of five departments which are:)Strategy and Development; b)Issues and Investments; c)Market Supervision; d)Enforcement; and e)Corporate Resources.

By virtue of section 5 of the SCA, no member of the Securities Commission shall hold full time office in any public listed company. In an effort to dispel even the remotest appearance of lack of impartiality or risk of conflict of interests, a member of the Securities Commission or any committee who has or acquires a direct or indirect interest in relation to any matter under discussion by the Securities Commission or any committee is required to

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disclose the existence of his interest and the nature hereof. Failure to disclose may render the affected member guilty of an offence and shall on conviction be liable to a fine not exceeding RM250, 000 or imprisonment not exceeding five years or both. Functions of the Securities Commission The Securities Commission assumes the position of a regulatory body, an approving body and a policing body.

The functions and responsibilities of the Commission are extensive and encompass the competing jurisdictions between facilitation and control. Under section 15(1) of the SCA, the Commission has the following functions: (a)to advise the Minister on all matters relating, to securities and futures industries; (b)to regulates all matters relating to securities and futures contracts; (c)to ensure that the provisions of the securities laws are complied with; (d)to regulate the take-overs and mergers of companies; (e)to regulate all matters relating to unit trust schemes; f)to be responsible for supervising and monitoring the activities of any exchange holding company, exchange, clearing house and central depository; (g)to take all reasonable measures to maintain the confidence of investors in the securities and futures markets by ensuring adequate protection for such investors; (h)to promote and encourage proper conduct amongst participating organisations, participants, affiliates, depository participants and all licensed or registered persons of an exchange, clearing house and central depository; (i)to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts, and the provision of investment advice or other services relating to securities or futures contracts; (j)to consider and make recommendations for the reform of the law relating to securities and futures

contracts; (k) to encourage and promote the development of securities and futures markets in Malaysia including research and training in connection thereto; (l) to encourage and promote self-regulation by professional associations or market bodies in the securities and futures industries; (m) to license and supervise all licensed persons as may be provided for under any securities law; and (n) to promote and maintain the integrity of all licensed persons in the securities and futures industries. Underpinning all these functions is the Securities Commission's ultimate responsibility of protecting the investor. Apart from discharging its regulatory functions, the Securities Commission is also obliged by statute to encourage and promote the development of the securities and futures market of Malaysia. One of the functions of the Commission as stated in section 15(b) is to regulate matters concerning securities and futures contracts. Though the trading of securities comes under the Securities Industry Act (SIA), it is the Commission which has regulatory oversight of the SIA.

The SIA regulates trading of securities. The preamble to the SIA is as follows: An Act to make provisions with respect to stock exchanges, stockbrokers and other persons dealing in securities, and for certain offences relating to trading in securities, and for other purposes connected therewith'. Under paragraph (c), the Commission is entrusted with the power to enforce laws and regulations governing the securities industry and futures trading and overseas the prosecution of violations of these laws and regulations. To facilitate this, the powers of Investigating Officers were expanded in 1998 to include the right to enter any place or building and subsequently inspect and

make copies of relevant documents. The powers also extend to search, seize and take possession of or detain evidential objects or material.

By virtue of paragraph (1)(f), the Commission is responsible for supervising and monitoring the activities of an exchange, clearing house and central depository. It is also required to promote and encourage proper conduct among members of these market institutions. Under paragraph (1)(h), (m) and (n), the Commission is entrusted with the licensing function through the exercise of which the Commission seeks to provide sufficient safeguards to protect investors. Paragraph (1)(k) requires the Commission to encourage and promote the development of securities and futures markets in Malaysia which includes research and training in connection thereto.

According to the Commission's 1998 Annual Report, the goal, as reaffirmed in The Securities Commission Business Plan 1998-2000, is to enhance standards in the Malaysian capital market. The Commission's education and training arm, the Securities Industry Development Centre, has articulated certain strategic objectives, actively developed educational programs for market participants and planned for the construction of a Securities Industry Development Centre. The function of the Commission in paragraph 1(i) is 'to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts'. The SCA does not define the terms 'illegal', 'dishonourable' or 'improper practices'. Under the Securities Industry Act, the Commission has the power to enquire into any securities transaction to determine whether any 'dishonest, unfair or unethical' devices or trading practices have occurred. However, neither are these terms defined in the Securities Industry Act.

Investors must turn to the rules of the relevant Stock Exchange and Futures Exchange for guidance. It should be noted, that sub-section (4) of section 15 states that nothing in paragraph 1(l) is to limit or otherwise affect the functions of the Commission. Consequently, despite the Commission's function of promoting self-regulation by professional or market bodies, it does not relinquish its primary function of overseeing securities and futures transactions. To this end, the Commission issues guidelines on a wide variety of practices. They set out, among other things, the standard of conduct of persons associated with the issue of securities; the Commission's Policies and Guidelines on Issue/Offer of Securities (issued 30 April 1999). It must also be noted that although termed ' Guidelines', compliance is required and failure may attract penalties.

Under section 158(5) of the SCA, the Commission has powers to take a wide range of actions, including the imposition of a penalty of up to RM1 million, depending on the severity or gravity of the failure to give effect to the guideline. Powers of the Securities Commission The powers of the Securities Commission can be divided into six types which are: (a)Quasi-judicial powers; (b)Quasi-legislative powers; (c)Minister's powers; d)Specific powers; (e)Power of judicial review; and (f)Administrative powers. The quasi-judicial powers of the Securities Commission are stated out in Part IV of the Securities Industry Act (SIA) (licenses) from section 12 up to section 28A. The quasi-legislative powers of the Securities Commission can be found in Part III of the SIA Stock Exchange/Clearance Houses (section 7 to 11B).

Section 9 of SIA states that the commission has the power to approve the amendment to the rules of a stock exchange. Furthermore, it can approve

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amendment to the rules of a recognised clearing house. Section 8B addresses the withdrawal of recognition of a clearing house. There are many specific powers of the Securities Commission as stated out in the SCA. Section 16 states that the Commission shall have all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws. Section 17 states the power of the Commission to delegate its powers.

By virtue of section 18, the Commission has the power to establish committees as it considers necessary. Part V of the SCA, from section 125 to 135, addresses the Commission's powers of enforcement and investigation whereas Part VI (section 136-160) addresses its power of prosecution. In line to that, section 140 addresses the protection of informers and information. Part X of the SIA (section 94 - 100A) deals with the enforcement and investigative powers of the Commission. Pertaining to civil proceedings, section 154 of the SCA says that authorised officers of the Securities Commission may represent the Commission in civil proceedings.

Section 155 states that the Commission may recover loss or damage. Part IV of the SCA deals with the issues of securities and take-overs and mergers. The Commission has powers of judicial review as in section 146 of the SCA. Under this section, the Commission may review its own decision upon an application made by any person who is aggrieved by such decision, within thirty days after being notified of the aggrieved decision. Subsequently, section 147 states that the decision of the Commission shall be final.

The Commission has administrative powers, too, and by this power, it has the authority to issue a letter of reprimand (statutory provisions) where there is a breach of disclosure of information or the company does not make timely disclosure. The role of the securities market regulator, which is the Securities Commission, is outlined in laws governing the Malaysian capital market that is, the SCA 1993, and SIA and Futures Industry Act 1993 (FIA). The SCA sets out the functions of the securities commission while the SIA and FIA focus on the equity and futures market respectively. The SCA grants the Securities Commission the role of the sole regulatory authority to regulate the Malaysian capital market and empowers the Commission to supervise and monitor the activities of exchange.

By virtue of the SIA and the FIA, the Commission is also empowered to approve the business rules of exchange and amendments thereof. The Securities Commission has no share holding in and memorandum of understanding with the exchange and there is no regulation that grants any power to the Commission to regulate the solvency of the exchanges. Kuala Lumpur Stock Exchange In February 2001, the Commission released a Capital Market Masterplan (CMP). This is a comprehensive plan that charts the capital market with a blueprint for growth, strategic positioning and development for the next decade. As part of the development process for exchanges, the CMP recommended that given the increased dynamism and competitive pressures of the global marketplace, a single Malaysian exchange be established through consolidation of all existing exchanges, and that the single Malaysian exchange should demutualize and list on the stock market by 2003.

The Kuala Lumpur Stock Exchange (KLSE) is a self regulatory company limited by guarantee. It regulates the conduct of its members and member companies in securities dealings, enforces the listing requirements and generally oversees the market place. The Central Depository System (CDS), in place since 1993, is the automated clearing and settlement system of the KLSE. Demutualised pursuant to the Demutualisation Act, the KLSE was converted into a public company limited by shares on January 5, 2004.

Upon the conversion, KLSE vested and transferred the securities exchange business to a wholly owned subsidiary, Bursa Malaysia Securities Sdn. Bhd. (Bursa Securities) and became an exchange holding company and was renamed Bursa Malaysia Berhad on April 14, 2004. Bursa Malaysia operates a fully integrated exchange, offering the complete range of exchange-related service, including trading, clearing, settlement and depository services. Bursa Malaysia also provides information services relating to the Malaysian securities and derivatives markets. KLSE operates as a group of companies, which collectively service the securities industry.

The following are the KLSE's subsidiary and affiliate companies: 1. KLSE-Bernamea Real-Time Information Services (KULBER); 2. Labuan International Financial Exchange (LFX); 3. Malaysian Central Depository (MCD); 4. MDEX; 5. Malaysian Share Registration Services (MSRS); 6.

Research Institute of Investment Analysts Malaysia (RIIAM); and 7. The Securities Clearing Automated Network Services Sdn. Bhd. (SCANS). Kuala Lumpur Commodities Exchange The Kuala Lumpur Commodity Exchange

(KLCE) is a futures exchange set up in 1980 after the Malaysian Parliament passed a new legislation known as the Commodities Trading Act, 1980.

It was subsequently restructured in 1985 after the default crisis in 1984. The rules and regulations of the KLCE are very similar to those of other established futures exchanges in the world. The KLCE provides a marketplace for trading in several types of commodity futures contracts such as the Crude Palm Oil (CPO) Futures, Tin Futures, Rubber (SMR20) Futures and Cocoa Futures¹. The CPO Futures trading is the only active futures contract trading in the KLCE and in fact accounts for more than 90 per cent of its trading volume. The KLCE is the only futures exchange in the world that trades in CPO Futures. It is located in Kuala Lumpur, Malaysia, which is in Southeast Asia, the palm oil producing region in the world.

This region currently accounts for about 80 per cent of global palm oil production and 70 per cent of exports . ConclusionIn conclusion, we can see that the KLSE works in parallel to the Securities Commission's Capital Market Masterplan (CMP). As such, the KLSE has embarked upon a concerted implementation program for the consolidation, demutualization and listing of KLSE to be effected within the timeframe stipulated in the CMP, details of which are still being discussed and considered by the relevant parties. The KLCE also functions according to the Securities Commission regulations. Therefore, the Securities Commission can be said as one that encourages and promotes the development of the securities and futures markets in Malaysia. Bibliography 1.

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